



APR 14 1948

CHARLES ELMORE
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

NO. 535, MISCELLANEOUS

ESTHER J. SAUERWINE, ADMINISTRATRIX, ESTATE
OF LUZERNE C. SAUERWINE, DECEASED,
Petitioner,

vs.

THE NEW YORK, CHICAGO AND ST. LOUIS RAIL-
ROAD COMPANY, A CORPORATION,
Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI, PROHIBITION, OR MANDAMUS TO
THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION.**

HAROLD A. SMITH,
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WINSTON, STRAWN, SHAW & BLACK,
Of Counsel.

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No. 535, Miscellaneous

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MAY IT PLEASE THE COURT:

Petitioner states that the two questions presented are:
(1) Does § 1404(a) of Title 28, United States Code, apply
to cases arising under the Federal Employers' Liability
Act; and (2) Assuming the section applies, do the facts and
circumstances of the case "require the Court, in the exercise
of its discretion, to transfer the case?" (Pet. p. 9.)

The first question involves the identical point presented
in *Kilpatrick v. Texas Pacific Ry. Co.*, Docket No. 233,

Misc., which was orally argued in this Court on February 8, 1949. The Court's ruling there will control this case. The related question of whether § 1404(a) applies to actions filed under § 12 of the Clayton Act, was also orally argued on the same day in the case of the *United States v. National City Lines, Inc.*, Docket No. 269, Misc. In view of the thorough argument had in those cases, which may be decided before the present petition is passed upon, it would be superfluous on our part to write anything further.

The second question obviously does not present anything to be decided by this Court. Of course, it becomes academic if the Court holds in the *Kilpatrick* case that § 1404(a) is not applicable to Federal Employers' Liability actions. However, if the Court holds to the contrary, the question posed is not one calling for the extraordinary exercise of the jurisdiction of this Court, assuming it does have jurisdiction under § 1651(a). The exercise of this Court's discretion to issue one of the writs prayed to a District Court is limited to cases of "public importance and exceptional character." (*Ex parte Republic of Peru*, 318 U. S. 578, 586.)

Conceding that a case such as the *Kilpatrick* case, which will settle the legal question of whether § 1404(a) applies to actions under the Federal Employers' Liability Act is a case of such a character, this Court is not going to entertain petitions presenting the question whether the District Court was justified in transferring a particular action. If this were not so it would be flooded with petitions contending that the Court abused its discretion in transferring an action under the facts of the particular case.

Be this as it may, the facts of this case fully justify the action of the District Court. All the factors referred to in *Gulf Oil Corporation v. Gilbert*, 330 U. S. 501, as will justify a Court in applying the doctrine of *forum non con-*

veniens are here present. The statement in the petition that: "It does not appear that the Court ever considered whether the case could be more conveniently tried in Chicago than in Fort Wayne or whether trial there would be in the interest of justice" (Pet. p. 12), is wholly unwarranted and contrary to the record. The record shows that the order was entered only after the question of the transfer had been thoroughly argued and considered in written briefs (R. 7, 14).

For the foregoing reasons, respondent respectfully prays that the petition for the writs prayed for be denied.

Respectfully submitted,

HAROLD A. SMITH,

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Chicago, Illinois,

Attorney for Respondent.

WINSTON, STRAWN, SHAW & BLACK,
Of Counsel.

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CHARLES ELMORE CROFT
CLERK

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OCTOBER TERM 1948

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Respondent.

STIPULATION.

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STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, that, except as the Court may otherwise indicate or direct, oral argument in said cause, both as to questions of jurisdiction and on the merits of the case, may be and the same is hereby waived and that said cause may be submitted at once to

the Court on the petition and briefs filed, for such disposition as to the Court may seem just and proper.

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